Petition

81-2013

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No. _____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1982

DONALD EDGAR JOHNSON,

Petitioner-Plaintiff-Appellant

vs

CARL ALFRED JOHNSON, SR., ET AL,

Respondents-Defendants-Appellees

On Writ Of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit

EMERGENCY
PETITION FOR WRIT OF CERTIORARI

DONALD EDGAR JOHNSON, In Pro Per
Petitioner-Plaintiff-Appellant
1424 Palmer Avenue - Rear
Muskegon, Michigan 49441
(616) 755-1925

PETITION FOR WRIT OF CERTIORARI

THIS 1980 EMERGENCY CAUSE IS WITHIN A 1973 CASE INVOLVING CRIME PLUS CONTESTED CUSTODY OF INTERSTATE-KIDNAPPED MINOR CHILDREN

NOW COMES DONALD EDGAR JOHNSON, petitioner-plaintiff-appellant in pro per, who contends that the U.S. Court of Appeals for the Sixth Circuit did erroneously affirm the West Michigan U.S. District Court's erroneous dismissal-with-prejudice of his attempted removal from state courts of his 1980 emergency nonfrivolous substantial unlitigated fully-accrued separate independent cause for Prejudice/Local Influence-Civil Rights-Criminal Prosecution action.

QUESTIONS

1. Whether A Plaintiff-Appellant Can Remove An Ongoing Separate Independent Cause Of Action From State Courts Upon Terms.

2. Whether Allegations of 5 Years Ongoing Conspiracy To Delay-Deny Under Color Of State Law And False Pretenses Bonefied Indigent Plaintiff-Appellant's Reasonable Timely Access To State Appellate Court Of His Main Old-Facts Case On Heels Of An Unfair Trial Stated Both A Cause Of Prejudice/Local Influence Action Under The Civil Rights Act Plus A Cause For Criminal Prosecution Action That Gave A Standing To Seek Removal.

3. Whether A Law Firm Partnership's 1965 Filing In County Register Of Deeds Its Overruling Of The Internal Revenue Service And Invalidation Of Tens Of Thousands Of Dollars Of Federal Tax Liens On Its Client's Real Estate Was And Continues To Be A Fraud/False Pretense On The U.S. Taxpayers, The I.R.S., The Courts, And The Immediate Buyers Of The Real Estate.

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Request To Certify & Transmit Record

To: John P. Hehman, Clerk
U.S. Court Of Appeals For The Sixth Circ.
Cincinnati, Ohio 45202

SIR: This is a copy of Petition For Writ of Certiorari this day mailed to the Supreme Court. Please certify and transmit the original entire post-3/18/80 Record of Cause No. 80-1609 to Clerk, Supreme Court, 1 First St., N.E., Washington, D.C. 20543.

Dated: April 16, 1982.

DONALD EDGAR JOHNSON, In Pro Per
Attorney for Plaintiff-Appellant
1424 Palmer Avenue - Rear
Muskegon, Michigan 49441

PARTIES

DONALD EDGAR JOHNSON, Petitioner,
vs.
CARL ALFRED JOHNSON, SR.,
RICHARD GORDON JOHNSON,
CARL ALFRED JOHNSON, JR., And
LANDMAN, LUYENDYK, LATIMER,
CLINK & ROBB Law Firm, Respondents.

REPORTS

No official or unofficial reports of any court opinions has been made.

JURISDICTION

Date of judgment sought to be reviewed: 1/22/82

Filed: 1/22/82.

Date of Order denying rehearing: 3/12/82.

Filed: 3/12/82.

Statutes: 28 U.S.C.A. § 2101 (c)(f).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED IN THIS CAUSE

U.S.C.A. Const. Amends 1, 5, 14 .

Act of Congress 1887-88,

42 U.S.C.A. §§ 1983, 1985(2),
18 U.S.C. §§ 241, 371
28 U.S.C.A. §§ 1331(a), 1343, 1441(a), 1443, 1446, 1653, 1915.

Michigan General Court Rules 120, 806 plus Mich. Court of Appeals letter-9/23/81.

STATEMENT OF FACTS

On 9/15/61, the Muskegon, Michigan county circuit court was prejudicial to the local influence of the Landman law firm when it deprived some long unpaid nightclub creditors, including the Internal Revenue Service, of their share of proceeds from a land lien sale by executing an improper nonpublic partial foreclosure sale with its secret distribution of too-meager proceeds.

About 8/20/64, the Landman law firm began representing plaintiff as he began a phono records-music publishing-nightclub family joint venture with his father and 2 brothers, defendants herein.

On 11/5/64, Landman law firm continued to represent both the sellers and a bank with mortgage on that fast-appreciating nightclub real estate which father and 3 sons this day purchased via 15-years land contract in name of one son, the plaintiff.

On 12/4/64, 3 defendants' then-attorney Albert J. Engel, Jr. began representing the 4 joint venturers and Landman law firm stopped.

On 3/8/65, Landman law firm evaded over $25,000 taxes due I.R.S. by filing in county register of deeds its overruling of the I.R.S. and declaration that substantial federal liens on said real estate were invalid.

During April 1965, it was then-attorney Engel (now one of the U.S. Court of Appeals judges) who a) knowingly misrepresented-4/6/65 that said fraud-3/8/65 was not a fraud, and b) wrongfully registered-4/16/65 in county register of deeds an invalid (for want of consideration) mortgage entitling 3 joint venture defendants to take their copartner plaintiff's entire joint venture interest in said 15 years land contract anytime after 3 years that joint venture proceeds failed to reimburse their contributions plus interest.

By 10/18/67, the 3 defendants and county tortfeasors exhausted most all of plaintiff's very substantial money and phono records/music publishing assets contributions as he slaved 100 hours weekly

for promised fair equity in future corporation and refinancing.

Between 3/27/69 and 4/27/73, the 3 defendants and their Landman law firm knowingly misrepresented to the courts that there never was a 15-years phono records-music publishing-nightclub family joint venture, locked land off the market, and took under false pretenses-then fraudulently disposed of plaintiff's total substantial worldwide properties, including interest in said land contract, forcing him onto California public welfare which interstate kidnapped his 10 years full custody minor children and denied benefits causing him to be beggar living in old car for 3 months -- all of this causing many tens of thousands of dollars damage to U.S. taxpayers and nightclub creditors plus over $2 million damages to plaintiff, age 50.

Between 4/27/73 and 12/9/74, Landman law firm secretly colluded with plaintiff's attorney who thus was fired and then-assistant attorney, and plaintiff in pro per

was denied a fair fully-recorded full trial by a prejudicial judge seeking 8 more years on bench and beholden to Landman law firm which wielded tremendous local influence as it continued to represent, during the election which was during the trial, the area's predominate news media with its hold on the voters who elected their county judges.

Between 12/9/74 and 3/11/80, plaintiff filed claim-12/18/74 of appeal and the 3 defendants-appellees and their huge influential Landman law firm acted willfully and wantonly in bringing, 5 years prosecuting and refusing to dismiss a patently unconstitutional conspiracy with state and federal court officials to delay-deny under color of state law and false pretenses (that appellant was not an indigent deserving of suspension or waiver of meaningful transcript cost) bonefied indigent crime victim (single and on public welfare work-programs 9/4/75 to 4/1/78) plaintiff-appellant in pro

per's due process right of reasonable timely access to State appellate court. Plaintiff-appellant raised federal questions sought to be reviewed during initial-post-judgment proceedings in state trial and appellate courts. And on 3/11/80, the state appellate courts not only condoned trial court's redenying-5/8/79 the materials (settled facts or transcripts) necessary for reasonable timely access, but denied emergency application for leave for interlocutory appeal on grounds, "it is filed more than 18 months after the December 9, 1974 order appealed from."

Between 3/18/80 and 3/12/82, Michigan and Sixth Circuit federal courts failed to uphold our Constitution and laws of the United States that require reasonable timely access to state appellate courts for due process, equal protection of laws for rich and poor alike, and parental rights -- by denying, under false pretenses that complaint was something that it wasn't, a petition for removal of a separate independent cause for prejudice/local

influence-civil rights-criminal prosecution action.

Since 1971 kidnapping and despite many pleas, no person from the executive or legislative branches or the state bar ever offered this crime victim any meaningful assistance.

REASONS FOR ALLOWANCE OF THE WRIT

The state appellate courts and the federal court of appeals (a) have decided important questions of federal law in ways conflicting with applicable decisions of this Court, and (b) have so sanctioned lower courts' departures from the accepted and usual course of judicial proceedings as to call for an exercise of this Court's power of supervision.

> "Once a State establishes an appellate forum it must assure access to it upon terms and conditions equally applicable and available to all." Chaffin v Stynchcombe, 36 L Ed 2d 714,722 n 11 (1973).

"When a plaintiff makes affidavit that from prejudice or local influence he believes that he will not be able to obtain justice in the State court he should have the right to remove the cause to the Federal court." Shamrock Oil & Gas Corp v Sheets, U.S.Tex.1941, 313 US 100,106 n 2.

"Liberal construction is to be accorded a pro se complaint." Sigafus v Brown, C.A.Ill.1969, 416 F2d 105.

"The right to petition the government for a redress of grievances includes the right of access to the courts; that right is also subject to due process protection in that the opportunity must be at a meaningful time in a meaningful manner. U.S.C.A. Const. Amends. 1, 5." Matter of N.C. Trading, Cust. & Pat. App. 1978, 586 F2d 221. (Emphasis added).

"Appellant bears burden of providing record which will amply illustrate all alleged errors which he wishes to press upon reviewing court." Lee v Habib, C.A.D.C.1970, 424 F2d 891.

"It is importance of right to individual, not technical distinction between civil and criminal, which should be of importance to court in deciding what procedures are constitutionally required in each case. U.S.C.A. Const. Amends. 5, 14." Id.

"Court procedures which of themselves invidiously discriminate between rich and poor impair guarantees of equal justice which Constitution was designed to protect. U.S.C.A. Const. Amends. 5, 14." Id.

"Right of all to have free access to courts is basic to our democratic system, and it cannot be conditioned on payment of fee where such condition precludes exercise of right. U.S.C.A. Const. Amends. 5, 14." Lee v Habid, Supra.

"Doubts about substantiality of questions on indigents' appeal and need for trancript at government expense to explore them should be resolved in favor of indigents." Lee v Habid, Supra.

"Judges should give due consideration to indigents' motions for transcripts in cases where law appears to be settled but where appellant is able to show that his chances of changing law on appeal are strong." Lee v Habid, Supra.

This petitioner contends that the federal court of appeals should have rendered a judgment something like this:

The plaintiff brought a pro se in forma pauperis interlocutory emergency petition for removal seeking injunctive relief and over $10,000 damages allegedly sustained as a result of an ongoing 5 years conspiracy to delay-deny under color of state law and false pretenses a substantial Constitution-U.S. laws right of reasonable timely access to State appellate court of his main old-facts case on heels of an unfair partial trial action

instituted against him in a Michigan county court. The plaintiff made affidavit that from prejudice and local influence he believed that he would not be able to obtain justice in the state courts. The defendants included the 3 individual defendants-appellees named in plaintiff's main 1973 civil case as well as the huge influential law firm partnership which continued to prosecute the action. On the plaintiff's appeal from District Court's dismissal with prejudice, this Court holds inter alia that the allegations set forth in amended pro se pleadings are to be construed in light most favorable to pleader and accepted as true; that plaintiff complied with procedure for removal; that plaintiff suing under the Civil Rights Act must demonstrate a deprivation of a right, privilege or immunity secured by the Constitution or laws of the United States, and causation of such deprivation by a person or entity acting under color of State law; that the amended petition alleging that

defendants and their law firm acted willfully and wantonly in bringing, 5 years prosecuting and refusing to dismiss a patently unconstitutional conspiracy with State and Federal court officials to delay-deny right of reasonable timely access to State court action against plaintiff stated a cause of action against defendants and their law firm under the Civil Rights Act; and that allegations of their over $25,000 Federal tax fraud plus their influencing-conspiring-delaying-denying-taking over $10,000-worth of rights under false pretenses stated a cause for a criminal prosecution action. The prior interlocutory decisions of the Federal courts were not res judicata and a bar to this sufficiently different interlocutory separate and independent claim or cause. This Court upholds the prevailing Constitution and laws of the United States requiring Federal jurisdiction of this emergency action which is forthwith remanded to District Court for prompt further proceedings.

Appendix

APPENDIX

OPINIONS, ORDERS, FINDINGS OF FACT AND CONCLUSIONS OF LAW BY COURT WHOSE DECISION IS SOUGHT TO BE REVIEWED

"Upon consideration of the plaintiff-appellant's motion for a court order that defendants and their law firm answer a request for admissions, And the Court being required to limit its review to only those matters filed before and considered by the district court, It is ORDERED that the motion be and is hereby is denied." (Order-10/15/80).

(Upon appellant's motion for immediate consideration together with proposed brief judgment), MOTION DENIED-11/17/80.

"Upon receipt and consideration of appellant's motions to add additional defendants to his appeal and for this Court to refer to this case as a cause; It is ORDERED that the motion to add additional defendants to this cause be and it hereby is denied." (Order-12/15/80).

"Appellant has moved the Court for leave to amend his district court pleadings, for a 'correction' in the identification of the parties defendant, and for immediate consideration. The Court has considered the motions and finds them not well taken. It is therefore ORDERED that the motions are hereby denied." (Order-2/26/81).

"This appeal has been referred to a panel of the Court pursuamt to Rule 9(a), Rules of the Sixth Circuit. After examination of the briefs and the record, the panel agrees unanimously that oral argument is not needed. Rule 34(a), Federal Rules of Appellate Procedure. The plaintiff has appealed from the District Court's denial of his petition for removal of a civil action from the state courts of Michigan to federal court. Judgement adverse to the plaintiff has been rendered in the action by a Michigan court. Upon consideration of the record, this Court concludes that, for the reasons set forth in the District Court's opinion of July 16, 1980,

removal was properly denied. This Court further concludes that the appeal is frivolous and entirely without merit. It is therefore ORDERED that the judgment of the District Court be and it hereby is affirmed, Rule 9(d)2, Rules of the Sixth Court." (Order-1/22/82).

"On receipt and consideration of a petition for rehearing and suggestion for rehearing en banc in the above-styled case; and No judge in active service in this court having moved for rehearing en banc, and the motion therefore having been referred to the panel which heard the case; and The panel having noted nothing of substance in said motion for rehearing which had not been carefully considered before issuance of the court's opinion, Now, therefore, the motion for rehearing is hereby denied." (Order-3/12/82).

"ORDERED, That motion to stay mandate herein pending application to the Supreme Court for writ of certiorari is hereby

granted and the mandate is stayed for thirty days from this date; provided that, if within such thirty days, the applicant shall file with the Clerk of this Court the certificate of the Clerk of the Supreme Court that the certiorari petition, record, and brief have been filed, the stay shall continue until the final disposition of the case by the Supreme Court. Unless this condition is complied with within such thirty days or any extension thereof made by the Court or any judge thereof, or if the condition is complied with, then upon the filing of copy of an order denying the writ applied for, the mandate shall issue." (Order-4/1/82).

OTHER SUCH OPINIONS, ORDERS, FINDINGS OF FACT, AND CONCLUSIONS OF LAW:

STATE OF MICHIGAN - IN THE CIRCUIT COURT FOR THE COUNTY OF MUSKEGON # 73-7432-CK DONALD EDGAR JOHNSON, Plaintiff, v. CARL ALFRED JOHNSON, SR., et al, Defendants. Donald Edgar Johnson In Propria Persona. William F. McNally (P-17533) Attorney for Defendants.

The above entitled action having come on for trial, the plaintiff having presented evidence and rested his case, the defendants having moved for Judgment at the end of plaintiff's case, the Court being fully advised in the premises, and the Court having made findings of fact and conclusions of law, IT IS ORDERED, that defendants' Motion be and hereby is granted and Judgment of No Cause of Action be entered in favor of the Defendants, with costs and statutory attorneys fees being taxed against plaintiff, plaintiff not having proven the allegations contained in his complaint for the reasons

set out in the opinion of the Court rendered in open court. (Judgment-12/9/74).

MICHIGAN COURT OF APPEALS # 22496 - DONALD EDGAR JOHNSON, Plaintiff-Appellant, vs CARL ALFRED JOHNSON, SR., RICHARD GORDON JOHNSON and CARL ALFRED JOHNSON, JR., Jointly and Severally, Defendants-Appellees.

In this cause this Court having issued an order on September 24, 1975 denying the defendants-appellees' motion to dismiss and the defendants-appellees having filed a motion for reconsideration of this Court's order denying the motion to dismiss, and various motions for leave to use proposed capsule statements of proceedings having been filed by the plaintiff-appellant, and due consideration thereof having been had by the Court,

IT IS ORDERED that the motion for reconsideration be, and the same is hereby GRANTED,

IT IS FURTHER ORDERED that this appeal be, and the same is hereby DISMISSED without

prejudice to the filing of an application for delayed appeal pursuant to GCR 806.4 after the full transcripts of the proceedings have been filed in the trial court,

IT IS FURTHER ORDERED that the various motions for leave to use various proposed capsule statements of proceedings filed by the plaintiff-appellant be, and the same are hereby DENIED. (Order-2/5/76).

STATE OF MICHIGAN - CIRCUIT COURT FOR COUNTY OF MUSKEGON # 73 C 7432 CK. DONALD EDGAR JOHNSON, Plaintiff, vs. CARL ALFRED JOHNSON, SR., RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., Jointly and Severally, Defendants.

The relief prayed for in the motions of Monday, May, 1979, is hereby denied. (Order-5/8/79).

MICHIGAN COURT OF APPEALS # 45093 - DONALD EDGAR JOHNSON, Plaintiff-Appellant, v. CARL ALFRED JOHNSON, SR., RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., Jointly and

severally, Defendants-Appellees.

In this cause an application for leave to appeal and motion for waiver of fees, and a motion for immediate consideration thereof are filed by plaintiff-appellant, and nothing in opposition thereto having been filed, and due consideration thereof having been had by the Court,

IT IS ORDERED that the motion to waive fees be, and the same is hereby GRANTED;

IT IS FURTHER ORDERED that the application be, and the same is hereby DENIED for lack of jurisdiction. GCR 1963, 806.2(5). In this application plaintiff seeks review of a December 9, 1974 circuit court dismissal of his action. The May 8, 1979 circuit court order involves post-judgment motions which plaintiff filed in circuit court in an attempt to perfect an application for delayed appeal before this Court. This Court may not grant plaintiff's application because it is filed more than 18 months after entry of the December 9, 1974 order appealed

from. (Order-10/26/79).

MICHIGAN COURT OF APPEALS # 45093 - DONALD EDGAR JOHNSON, Plaintiff-Appellant, v. CARL ALFRED JOHNSON, SR., RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., Jointly and severally, Defendants-Appellees.

In this cause an application for rehearing has been filed by the plaintiff-appellant and no answer in opposition thereto having been filed, and due consideration thereof being had by the Court,

IT IS ORDERED that the application for rehearing be, and the same is hereby DENIED. (Order-12/4/79).

MICHIGAN SUPREME COURT # 64310, CR 28-298 & a-b. DONALD EDGAR JOHNSON, Plaintiff-Appellant, v CARL ALFRED JOHNSON, SR., RICHARD GORDON JOHNSON, CARL ALFRED JOHNSON, JR., jointly and severally, Defendants-Appellees.

On order of the Court, the motions for immediate consideration are considered, and

they are GRANTED. The application in propria persona for leave to appeal is also considered, and it is DENIED, because the Court is not persuaded that the questions presented should be reviewed by this Court. (Order-3/11/80).

U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN # G 80-191 CA 6. DONALD EDGAR JOHNSON, Plaintiff, vs. CARL ALFRED JOHNSON, SR., et al., Defendants. Opinion on Dismissal

On or about April 27, 1973, plaintiff filed a civil action in Muskegon County Circuit Court, alleging that the defendants, his father and two brothers, had perpetrated a host of business and personal injustices upon him. This action was tried on the merits before the Honorable John H. Piercey, who entered a judgment of no cause of action in favor of the defendants on December 9, 1974. Plaintiff appealed this decision to the Michigan Court of Appeals which, upon due consideration, entered an Order of Dismissal

of the appeal on February 5, 1976. He thereupon sought leave to appeal to the Michigan Supreme Court, which denied his petition for leave to appeal on May 26, 1976, as well as his subsequent petitions for reconsideration on August 4, 1976 and August 18, 1976. Plaintiff then petitioned the United States Supreme Court for a writ of certiorari, which was denied on October 4, 1976.

On November 1, 1976, plaintiff filed an "Ex Parte Petition for Removal of Causes" in this Court. This action, designated G 76-559 CA 6, sought to "remove" the previously litigated and appealed state court case to federal court. In an Opinion entered on April 22, 1977, this Court dismissed that action on the grounds of res judicata and the inapplicability of the federal removal statutes to the situation presented.[1/] His motion for reconsideration was denied on May 5, 1977. On March 14, 1978, the United States Court of Appeals for the Sixth Circuit affirmed

this dismissal, declaring:

> "The record establishes that plaintiff-appellant attempted to remove this civil action from the state courts of Michigan after affirmance of a judgment adverse to hime to the United States District Court. It appearing that for the reasons set forth in the memorandum opinion filed April 22, 1977, by United States District Judge Wendell A. Miles, the action was properly dismissed, and it being further concluded that the appeal is frivolous and entirely without merit, Rule 9(b)2, Rules of the Sixth Circuit.
> IT IS ORDERED that the judgment of the district court be and it hereby is affirmed."

Johnson v Johnson, No. 77-1346 (6th Cir. 1978).[2/] The United States Supreme Court denied plaintiff's petition for a writ of certiorari on this case on October 2, 1978.[3/]

On March 24, 1980, plaintiff filed another "Ex Parte Petition for Removal of Causes" in this Court. This action, designated G 80-191 CA 6, names the same defendants and recites the same multitude of grievances previously asserted in the dismissed state and federal actions and appeals. The complaint alleges no newly discovered evidence nor any claims distinct from those previously asserted and

plaintiff makes no attempt to distinguish the present action from the prior cases.

As stated by this Court in its Opinion dismissing case number G 76-539 CA6, the doctrine of res judicata prohibits the relitigation of an action in which a judgment on the merits has been rendered and unsuccessfully appealed. Lawlor v. National Screen Service Corp., 349 U.S. 322 (1955). Regardless of plaintiff's dissatisfaction with the decision, the adjudication previously rendered in a court of competent jurisdiction if final and binding on the parties as to all matters which were or should have been addressed in the proceeding. Commissioner of Internal Revenue v. Sunnen, 333 U.S. 591 (1948); Morris v Jones, 329 U.S. 545 (1947); 1B Moore's Federal Practice ¶0.405, pp. 623-24 (1974).

Plaintiff's refusal to accept the fact that this litigation has ended is an enigma to this Court. The trial court has told him that he is living in a "dreamworld."

(Transcript of December 9, 1974 proceedings before Hon. John H. Piercey, p. 20). The Sixth Circuit has described his appeal of the first federal court dismissal of this action as "frivolous and entirely without merit." (March 14, 1978 Order in No. 77-1346). Still, he continues to abuse the judicial processes in a vain and futile attempt to vilify the defendants and their past and present counsel. Such behavior cannot be countenanced or permitted. This action is dismissed with prejudice.

IT IS SO ORDERED. (Order-7/16/80).

U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN # G80-191 CA 6. DONALD EDGAR JOHNSON vs CARL ALFRED JOHNSON, SR., et al,

It is Ordered and Adjudged that the complaint is hereby dismissed with prejudice. (Judgment-7/17/80).

U.S. DISTRICT COURT FOR THE WESTERN DISTRICT OF MICHIGAN # 80-191 CA 6. DONALD EDGAR JOHNSON, Plaintiff, vs. CARL ALFRED JOHNSON, SR., et a., Defendants.

Plaintiff has filed a motion requesting the Court to reconsider its Opinion dated July 16, 1980 dismissing this action with prejudice. The motion is supported by a brief, five "emergency supplements," and a "Notice of Special Inquiry to U.S. Court of Appeals."

The Court has reexamined its Opinion in light of the matters raised in plaintiff's submissions and concludes that its order of dismissal was proper and shall not be disturbed. (Order-8/29/80).

COPY OF JUDGMENT SOUGHT TO BE REVIEWED PLUS ORDER ON REHEARING:

U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT # 80-1609. DONALD EDGAR JOHNSON, Plaintiff-Appellant v. CARL ALFRED JOHNSON, SR., RICHARD GORDON JOHNSON AND CARL ALFRED JOHNSON, JR., Defendants-Appellees.

This appeal has been referred to a panel of the Court pursuant to Rule 9(a), Rules of the Sixth Circuit. After examination of the briefs and the record, the panel agrees unanimously that oral argument is not needed. Rule 34(a), Federal Rules of Appellate Procedure.

The plaintiff has appealed from the District Court's denial of his petition for removal of a civil action from the state courts of Michigan to federal court. Judgment adverse to the plaintiff has been rendered in the action by a Michigan court.

Upon consideration of the record, this Court concludes that, for the reasons set forth in the District Court's opinion of July

16, 1980, removal was properly denied. This Court further concludes that the appeal is frivolous and entirely without merit.

It is therefore ORDERED that the judgment of the District Court be and it hereby is affirmed, Rule 9(d)2, Rules of the Sixth Circuit. ENTERED BY ORDER OF THE COURT. (Order-1/22/82).

U.S. COURT OF APPEALS FOR THE SIXTH CIRCUIT # 80-1609. DONALD EDGAR JOHNSON, Plaintiff-Appellant, vs. CARL ALFRED JOHNSON, SR., RICHARD GORDON JOHNSON AND CARL ALFRED JOHNSON, JR., Defendants-Appellees.

On receipt and consideration of a petition for rehearing and suggestion for rehearing en banc in the above-styled case; and

No judge in active service in this court having moved for rehearing en banc, and the motion therefore having been referred to the panel which heard the case; and

The panel having noted nothing of substance in said motion for rehearing which had not been carefully considered before issuance of the court's opinion,

Now, therefore, the motion for rehearing is hereby denied.

Entered by order of the Court. (Order-3/12/82).

PERTINENT TEXT OF CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, ORDINANCES, AND REGULATIONS WHICH THIS CAUSE INVOLVES

"Congress shall make no law . . . respecting the right of the people . . . to petition the Government for a redress of grievances." (U.S. Const. Amend. 1).

"No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation." (U.S. Const. Amend. 5).

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States, and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws." (U.S. Const. Amend. 14).

"When a plaintiff makes affidavit that from prejudice or local influence he believes that he will not be able to obtain justice in the State court he should have the right to remove the cause to the Federal court. The bill secures that right to a plaintiff." (Act 1887-88 § 2 - See H. Rept. No. 1078, 49th Cong. 1st Sess. p. 1).

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws,

shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress." (42 U.S.C.A. § 1983).

"If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured--

They shall be fined not more than $10,000 or imprisoned not more than ten years, or both; and if death results, they shall be subject to imprisonment for any term of years or for life." (18 U.S.C. § 241).

"If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons to any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both. . ." (18 U.S.C. § 371).

"If two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws . . ." (42 U.S.C.A. § 1985(2).

"In no event shall leave to appeal be granted later than 18 months from the entry of the order or judgment appealed from in any civil matter." (Mich GCR 806.2(5) effective to 6/2/78).

"If an application (under either subrule 806.4(1) or (2)) in a civil case is filed more than 18 months after entry of the order or judgment appealed from, leave to appeal may not be granted." (Mich GCR 806.2(5) effective since 6/2/78).

"The provisions of General Court Rule 806.2 do not bar the filing or submission or consideration of an 8-year old application for delayed appeal. The court rule provision merely precludes the granting of such an application." (Mich. Court of Appeals' assistant clerk Hensel letter-9/23/81).

"The district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds the sum or value of $10,000, exclusive of interest and costs, and arises under the Constitution, laws, or treaties of the United States." (28 U.S.C. § 1331(a)).

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person . . . (3) To redress the deprivation, under color of any state law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States; (4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights." (28 U.S.C. § 1343).

"Any of the following civil action or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending: (1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing

for equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof; (2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law." (28 U.S.C. § 1443).

"Except as otherwise expressly provided by Act of Congress, any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending. .(. . (c): Whenever a separate and independent claim or cause of action, which would be removable if sued upon alone, is joined with one or more otherwise non-removable claims or causes of action, the entire case may be removed and the district court may determine all issues therein, or, in its discretion, may remand all matters not otherwise within its original jurisdiction." (28 U.S.C. § 1441(a),(c)).

"A defendant . . . desiring to remove any civil action . . . from a State court shall file in the district court of the United States for the district and division within which such action is pending a verified petition containing a short and plain statement of the facts which entitle him or or them to removal together with a copy of all process, pleadings and orders served upon him or them in such action. (b): The petition for removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within 30 days after the service of the summons upon the defendant if such initial pleading has then been filed

in court and is not required to be served on the defendant, which ever period is shorter. If the case stated by the initial pleading is not removable, a petition for removal may be filed within 30 days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it is or has become removable. . . . (e): Promptly after the filing of such petition and bond the defendant . . . shall give written notice thereof to all adverse parties and shall file a copy of the petition with the clerk of such State court which shall effect the removal and the State court shall proceed no further unless and until the case is remanded." (28 U.S.C. § 1446(a),(b),(e)).

"Defective allegations of jurisdiction may be amended, upon terms, in the trial or appellate courts." (28 U.S.C. § 1653).

"Proceedings in forma pauperis . . . (b) In any civil or criminal case the court may, upon the filing of a like affidavit, direct that the expense of printing the record on appeal, if such printing is required by the appellate court, be paid by the United States . . . (d) The court may request an attorney to represent any such person unable to employ counsel . . . (e) Judgment may be rendered for costs at the conclusion of the suit or action as in other cases, but the United States shall not be liable for any of the costs thus incurred. If the United States had paid the costs of a stenographic transcript or printed record for the prevailing party, the same shall be taxed in favor of the United States." (28 U.S.C. § 1915).

"Fees and Costs, Waiver or Suspension for Indigent Persons. . . . .2 Suspension of Fees and Costs for Persons Receiving Public Assistance. Upon any person submitting to the clerk of the court an affidavit that he isthen receiving any form of public assistance, the payment of all fees and costs as to that person in the action, required to be paid by law or court rule, shall there-

upon be suspended. .3 Waiver or Suspension of Fees and Costs by Court for Indigent Persons. In instances where the person is not receiving public assistance, the court shall order waiver of the payment of all fees and costs as to a person in the action, required to be paid by law or court rule, or shall order the suspension of the payment of the payment of those fees or costs until the conclusion of the litigation upon that person submitting to a judge of the court an exparte affidavit stating facts showing that person's inability to pay those fees and costs because of indigency." (Mich. General Court Rule 120).

"Appeals by Right and by Leave. GCR 806 ... .2 Appeal by Leave. The Court of Appeals may grant leave to appeal from: . . . If an application (under either subrule 806.4(1) or (2)) in a civil case is filed more than 18 months after entry of the order or judgment appealed from, leave to appeal may not be granted. . . . .4 Delayed Appeal . . . (2) Where timely appeal would have been of right, application for delayed appeal need not be accompanied by settled statement of facts but shall affirmatively show, by statement of facts and brief, that there is merit in the claim of appeal and, by affidavit of facts, that the delay was not due to appellant's culpable negligence." (Mich. General Court Rule 806).

"The provisions of General Court Rule 806.2 do not bar the filing or submission or consideration of an 8-year old application for delayed appeal. The court rule provision merely precludes the granting of such an application." (Mich. Court of Appeals' assistant clerk Hensel letter-9/23/81).

PROOF OF SERVICE

It is hereby certified that service of this Petition for Certiorari has been made on each of the 4 respondents-defendants-appellees on this ____ day of April, 1982, in envelopes, with postage prepaid, properly address - including:

William F. McNally, Jon D. VanderPloeg & William M. Newman of the law firm of LANDMAN, LUYENDYK, LATIMER, CLINK & ROBB, 400 Terrace Plaza - P.O. Box 29 Muskegon, Michigan 49443

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